

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MONSANTO COMPANY and )  
 )  
MONSANTO TECHNOLOGY, LLC, )  
 )  
Plaintiffs, )  
 )  
vs. ) Case Number: 4:09-CV-1848 HEA  
 )  
DENNIS GERMANN, )  
 )  
Defendant. )

**MONSANTO COMPANY'S ANSWER  
TO DEFENDANT'S COUNTERCLAIM**

Plaintiff/Counterclaim Defendant Monsanto Company (“Monsanto”), answers the counterclaims of Defendant Dennis Germann (“Defendant”) as follows:

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Deny.
6. Deny.
7. Monsanto admits that part of the investigation, conducted by agents hired by undersigned counsel, occurred in May 2009. Monsanto denies all allegations contained in paragraph 7 not specifically admitted herein.

8. Monsanto admits that it believes Dennis Germann caused patented Roundup Ready® soybeans to be cleaned. Monsanto denies all allegations contained in paragraph 8 not specifically admitted herein.

9. Monsanto admits that investigators, hired by undersigned counsel, contacted Defendant on October 6, 2009. Monsanto denies all allegations contained in paragraph 9 not specifically admitted herein.

10. Deny.

11. Monsanto admits that the scope of the investigation, conducted by agents hired by undersigned counsel, was to seek information regarding Dennis Germann's use of Roundup Ready® soybeans. Monsanto denies all allegations contained in paragraph 11 not specifically admitted herein.

12. Deny.

13. Deny.

14. Deny.

15. Monsanto admits that investigators, hired by undersigned counsel, conducted additional surveillance on Dennis Germann. Monsanto denies all allegations contained in paragraph 15 not specifically admitted herein.

16. Monsanto admits that investigators, hired by undersigned counsel, viewed Dennis Germann conducting harvesting and tilling activities on November 2, 2009. Monsanto denies all allegations contained in paragraph 16 not specifically admitted herein.

17. Deny.

18. Monsanto admits that it has prosecuted other lawsuits involving claims similar to the claims alleged against Dennis Germann. Monsanto denies all allegations contained in paragraph 18 not specifically admitted herein.

19. Deny.

20. Admit.

21. Monsanto admits that a large portion of the midwestern soybean harvest occurs during October and November. Monsanto denies all allegations contained in paragraph 21 not specifically admitted herein.

22. Monsanto admits that it is aware that some farmers conduct fall tillage and fertilizer applications in October and November. Monsanto denies all allegations contained in paragraph 22 not specifically admitted herein.

23. Deny.

24. Deny.

25. Deny.

26. Deny.

#### **COUNT I - DEFAMATION**

27. Monsanto restates and incorporates by reference its answers to Defendant's allegations contained in paragraphs 1-26 of Defendant's counterclaim.

28. Admit.

29. Deny.

30. Deny.

31. Monsanto admits that some farmers who do not have a valid license to use Monsanto's patented crop traits lack authority to purchase Roundup Ready® soybeans. Monsanto denies all allegations contained in paragraph 31 not specifically admitted herein.

32. Monsanto admits that businesses selling Roundup Ready® soybeans are not authorized to make sales of said seed to persons and entities that are not authorized to use the technology and that do not possess a valid license. Monsanto denies all allegations contained in paragraph 32 not specifically admitted herein.

33. Deny.

34. Deny.

35. Deny.

36. Deny.

37. Deny.

38. Deny.

39. Deny.

#### **COUNT II – PRIMA FACIE TORT**

40. Monsanto restates and incorporates by reference its answers to Defendant's allegations contained in paragraphs 1-39 of Defendant's counterclaim.

41. Admit.

42. Deny.

43. Deny.

44. Deny.

45. Deny.

46. Deny.

47. Deny.

48. Deny.

49. Deny.

50. Deny.

51. Deny.

**COUNT III – INTERFERENCE WITH BUSINESS / TRADE**

52. Monsanto restates and incorporates by reference its answers to Defendant's allegations contained in paragraphs 1-51 of Defendant's counterclaim.

53. Deny.

54. Deny.

55. Deny.

56. Deny.

57. Deny.

58. Deny.

59. Deny.

60. Deny.

61. Deny.

62. Deny.

**FIRST DEFENSE**

Defendant's counterclaims fail to state any claim upon which relief may be granted.

**SECOND DEFENSE**

Defendant's losses, if any, were caused by Defendant's own actions or the actions of third parties for which Monsanto is not responsible, and are barred in whole or in part by the doctrine of comparative fault.

**THIRD DEFENSE**

Defendant's claims are in whole or in part the result of his failure to mitigate damages.

**FOURTH DEFENSE**

Defendant fails to state a claim for and is not entitled to punitive damages.

**FIFTH DEFENSE**

Defendant's claims are barred by the doctrines of estoppel, waiver, and unclean hands.

**SIXTH DEFENSE**

Monsanto may have additional defenses to Defendant's claims, which may be revealed through discovery, and, accordingly, Monsanto reserves the right to assert additional defenses if appropriate.

WHEREFORE, having fully answered the allegations of Defendant's Counterclaims, and set forth its defenses thereto, Monsanto respectfully requests that the Counterclaims of Defendant Dennis Germann be dismissed with prejudice, that Monsanto be awarded its costs incurred herein, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

By/s/ Daniel C. Cox

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*Attorneys for Plaintiffs Monsanto Company and  
Monsanto Technology, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of May 2010, a true and accurate copy of the foregoing was filed electronically with the Clerk of Court to be served by operation of the court's electronic filing system upon the following:

Steven H. Schwartz  
Matthew G. Koehler  
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*Attorneys for Defendant*

/s/ Daniel C. Cox